Filed 2/9/09; pub. order 3/6/09 (see end of opn.)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

LARRY MENKE, INC., et al., Plaintiffs and Appellants, v. DAIMLERCHRYSLER MOTORS CO. et al., Defendants and Respondents.	G039686 (Super. Ct. No. 06CC13003) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Charles Margines, Judge. Affirmed.

Law Offices of Michael J. Flanagan, Michael J. Flanagan and Gavin M. Hughes for Plaintiffs and Appellants.

Hunton & Williams, Ann Marie Mortimer, James Kawahito; Wheeler Trigg Kennedy, Mark F. Kennedy, Mark T. Clouatre and John P. Streelman, pro hac vice, for Defendants and Respondents.

* * *

Larry Menke, Inc., doing business as Larry Menke Chrysler, and Larry Menke (collectively, Menke) appeal from a judgment of dismissal after the trial court sustained the demurrer filed by DaimlerChrysler and one of its employees, Louis Stavale

(collectively, Chrysler). Menke had intervened as an additional plaintiff in Wester Motors' (Wester's) suit against Chrysler after Chrysler declined to approve Wester's application to transfer its Dodge automobile dealership in Seaside, California, to Menke. Menke contends the trial court erred in concluding its first amended complaint stated no cause of action for violation of Vehicle Code, section 11713.3, subdivision (e),[1] which governs a manufacturer's responsibilities to a franchisee seeking to transfer or assign its interest in an automobile dealership. Menke also challenges the trial court's conclusion its complaint failed to state claims for intentional or negligent interference with prospective business advantage or for tortious interference with the franchise transfer contract agreed upon by Wester and Menke. Because section 11713.3, subdivision (e), applies by its express terms only to franchise transferors — not their prospective transferees — and because Menke alleged no independent torts other than the putative violation of the Vehicle Code, Menke's claims fail as a matter of law and the trial court properly sustained Chrysler's demurrer. We therefore affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

After local government officials announced plans to condemn part of the auto mall in which Wester operated, Wester's owners sought to exit the business and sell their Dodge dealership rather than relocate. Menke, already a DaimlerChrysler franchisee in Seaside with a Chrysler dealership, expressed interest in bringing the Dodge line under its roof. But according to Menke, Chrysler personnel expressed immediate and unrelenting hostility to the idea, with one representative announcing the transfer was "'never going to happen'" and another stating that Chrysler approval would occur

[1] All subsequent unlabeled section references are to the Vehicle Code.

"'[o]ver my dead body.'" Nevertheless, Menke continued negotiations with Wester, though it displeased Menke when Chrysler invited Donald Butts, another interested dealer, to franchise-sale discussions with Wester that Menke had believed would be exclusive and private. Louis Stavale, a Chrysler representative, reportedly informed Wester that Chrysler "would find it difficult to approve Larry Menke, but Donald Butts was an approvable candidate." Wester, however, rejected Butts's $500,000 offer for the franchise, accepting Menke's $950,000 bid. Wester's franchise agreement with Chrysler conditioned any transfer of the franchise on Chrysler's approval. The terms of section 11713.3 governing franchise transfers included the same condition. (§ 11713.3, subd. (e).)

Chrysler rejected the proposed transfer of Wester's franchise to Menke. Chrysler detailed its reasons for rejecting Menke as a franchisee in a letter to Wester required by section 11713.3, subdivision (d)(2)(B). To no avail, Menke wrote Chrysler a detailed letter explaining how he could resolve Chrysler's unfounded reservations. Menke explained, for example, that its working capital for its Chrysler dealership exceeded Chrysler's requirements, contrary to Chrysler's letter. Chrysler was not persuaded. Chrysler also later rejected a separate transfer agreement between Butts and Wester.

Wester eventually sued Chrysler and Menke intervened as an additional plaintiff. Asserting statutory violations and interference with prospective business advantage from Menke's proposed transfer agreement with Wester, Menke alleged Chrysler "*predetermined*, based upon *bias* and *personal animus*, and without justification, and therefore *unreasonably and in bad faith*, that Menke would never receive the franchise under any circumstances, in violation of Vehicle [C]ode [s]ection

11713.3(e)." Menke alleged Chrysler repeatedly made false statements and that Chrysler based its refusal to approve the transfer to Menke upon knowingly false statements and personal bias. According to Menke, "Chrysler intentionally sought to induce the breach and/or failure of the contract for the sale of Wester Dodge to Larry Menke, by among other things, inviting another party into *confidential discussions* [*sic*] who was only willing to offer half the amount Menke was willing to pay for the Dodge franchise." According to Menke, Chrysler's tortious acts enabled it to "reacquire the Wester Dodge franchise for *no cost* even though Menke was willing to pay nearly $1 million."

The trial court sustained Chrysler's demurrer to the complaint with leave for Menke to amend, and after concluding Menke's first amended complaint failed to cure the pleading defects, denied further leave to amend. Menke now appeals.

II

DISCUSSION

A. *Menke Had No Standing to Assert Violation of Section 11713.3, Subdivision (e)*

Menke contends the trial court erred in sustaining Chrysler's demurrer to his cause of action under section 11713.3, subdivision (e).[2] According to Menke, subdivision (e) protects not only automobile franchise transferors, but also potential transferees. We disagree. "On review of an order sustaining a demurrer without leave to amend, our standard of review is de novo, 'i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law.' [Citation.]" (*Santa Teresa Citizen Action Group v. State Energy Resources Conservation & Development Com.* (2003) 105 Cal.App.4th 1441, 1445.)

[2] For convenience, we hereafter sometimes refer to section 11713.3, subdivision (e), as simply subdivision (e).

Subdivision (e) makes it "unlawful and a violation of this code" for any manufacturer "[t]o prevent, or attempt to prevent, *a dealer* from *receiving* fair and reasonable compensation for the value of the franchised business." (Italics added.) Subdivision (e) further provides: "There shall be no transfer or assignment of *the dealer's franchise* without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld or conditioned upon the release, assignment, novation, waiver, estoppel, or modification of any claim or defense by the dealer."

"'When the language of a statute is clear and unambiguous, there is no need for interpretation and we must apply the statute as written.'" (*Chambers v. Miller* (2006) 140 Cal.App.4th 821, 825.) The terms of section 11713.3, subdivision (e), could not be clearer: it protects franchise owners against manufacturer conduct that would prevent the dealer "from *receiving* fair and reasonable compensation for the value of the franchised business." (Italics added.) The statute says nothing about potential purchasers. The trial court aptly summed up the statute this way: "The plain language of the code section makes clear that it is the dealer selling the franchise who has standing to sue, and not a prospective buyer"; accordingly, "[i]t is plain that the 'dealer' referred to in the statute is the seller of a franchise, i.e., Wester Motors, and not this plaintiff."

We do not pass on the wisdom or policy of the Legislature's enactments. "In interpreting statutes, we follow the Legislature's intent, as exhibited by the plain meaning of the actual words of the law, ""'whatever may be thought of the wisdom, expediency, or policy of the act.'""" (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632.) Menke protests there is no reason to distinguish between it as a buyer and Wester as a seller since "*both* suffered demonstrable harm" from Chrysler's decision to reject the transfer. But statutes affecting

economic interests need only survive limited scrutiny under the rational basis test. (*Landau v. Superior Court* (1998) 81 Cal.App.4th 191, 208.) Limiting the manufacturer's liability to its franchisee rather than potential purchasers passes muster because the Legislature could rationally conclude the possibility of *multiple* disappointed suitors would expose the manufacturer to disproportionate liability for a single franchise.

Menke relies on section 11726 for a contrary conclusion, but the trial court correctly read that provision in conjunction with section 11713.3, subdivision (e), to determine that the damages and attorney fee *remedies* specified in section 11726 are only available to *transferors* frustrated by manufacturer conduct violating subdivision (e), not prospective transferees. Section 11726 provides: "Any licensee suffering pecuniary loss because of any willful failure by any other licensee to comply with any provision of Article 1 (commencing with Section 11700) . . . may recover damages and reasonable attorney fees therefore in any court of competent jurisdiction." Seizing on the "[a]ny licensee" language, Menke contends that because it already holds a license under the Vehicle Code as a Chrysler franchisee, section 11726 authorizes it to sue.

Individual statutes, however, are not to be read in isolation. "'"[T]he meaning of the enactment may not be determined from a single word or sentence; the words must be construed in context." [Citation.]'" (*State of California ex rel. Dockstader v. Hamby* (2008) 162 Cal.App.4th 480, 487; see *Gately v. Cloverdale Unified School Dist.* (2007) 156 Cal.App.4th 487, 494 ["Statutory provisions that are in pari material, i.e., related to the same subject, should be construed together as one statute and harmonized if possible"].) Menke cannot transmute the accidental circumstance that it,

among all possible purchasers,[3] is already a licensee into standing contrary to the terms of subdivision (e). To illustrate the fallacy of Menke's approach: assuming arguendo that terms of subdivision (e) somehow embraced potential transferees as a protected class, it would defy reason to deny particular transferees a remedy simply because they are not licensees as specified in section 11726. The more natural reading is, as the trial court correctly concluded, that section 11726 merely specifies the remedy available for violations of subdivision (e) and does not expand or restrict the scope of those entitled to sue under it.

Menke asserts the reference to "any other person" in section 11713.3, subdivision (d)(1) confers standing on all persons to sue. But, like subdivision (e), the terms of subdivision (d)(1) make it clear that its protection extends to franchise transferors, not transferees. Under section 11713.3, subdivision (d)(1), a manufacturer may not "prevent or require, or attempt to prevent or require, by contract or otherwise, [with*] any dealer, or any officer, partner, or stockholder of any dealership*, the sale or transfer of any part of the interest of any of them to any other person." (*Italics added*.) These plain terms, as in subdivision (e), do not include potential transferees. Because neither subdivisions (d)(1) or (e) of section 11713.3 create a cause of action for potential transferees, the trial court correctly sustained Chrysler's demurrer on Menke's statutory claim.

B. *Menke's Interference Claims Are Also Without Merit*

Menke argues the trial court erred in sustaining Chrysler's demurrer to its claims for intentional and negligent interference with prospective business advantage and

[3] Section 11713.3, subdivision (d)(1), expressly authorizes a franchise owner to transfer the dealership to "any other person," not just to persons already licensed under the Vehicle Code.

for tortious interference with the franchise transfer agreement Wester and Menke inked. Each of these three causes of action include the element of wrongful interference. (See *Edwards v. Arthur Anderson LLP* (2008) 44 Cal.4th 937, 944 [intentional interference with prospective economic advantage requires proof "the interference was wrongful"]; *Venhaus v. Shultz* (2007) 155 Cal.App.4th 1072, 1078 [negligent interference with prospective economic advance requires proof of "'wrongful conduct'"]; *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153 (*Korea Supply*) [tortious interference with contract requires proof defendant's acts were independently wrongful, apart from interfering with contract].) The fatal flaw in Menke's argument, however, is the same flaw pervading its pleadings: Menke alleged no wrongful interference committed by Chrysler *other than Chrylser's putative violation of subdivision (e) by unreasonably withholding consent to the franchise transfer*.

Even assuming Chrysler violated subdivision (e), it does not follow that Chrysler engaged in any conduct giving rise to a tort action by Menke. To the contrary, violation of a statute only constitutes evidence of a tort if "[t]he person suffering the . . . injury . . . was one of the class of persons for whose protection the statute . . . was adopted." (Evid. Code, § 669.) As explained *ante*, that is not the case here. Consequently, the litany of evidence Menke recites in its complaint detailing how and why Chrysler's refusal to consent to the transfer must be viewed as unreasonable is, simply put, irrelevant. True, section 11713.3, subdivision (d)(3), specifies that "whether the withholding of consent was unreasonable is a question of fact," but it is a fact question pertinent only to Wester's claims against Chrysler, not Menke's, since Menke falls outside the scope of subdivision (e)'s protection.

Menke's vague references to "independent wrongful conduct" in the reply brief do not save Menke's suit. Menke contends its first amended complaint alleged wrongful conduct apart from violation of subdivision (e), "includ[ing] defamation, misrepresentation, breach of the covenant of good faith, violations of common law and the violation of the franchise agreements for both Menke and Wester." We can make little sense of this mish-mash. Menke's failure to specify any particular "violations of common law" forfeits those claims. (See *Berry v. American Express Publishing, Inc.* (2007) 147 Cal.App.4th 224, 228 [appellant bears burden of demonstrating how it could amend complaint to state cause of action].) Menke's reference to alleged contractual breaches, i.e., "the covenant of good faith [and fair dealing]" and unspecified terms of "franchise agreements" fails both for uncertainty and because breach of a contract is not generally a tort. (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 512 (*Applied Equipment*); see also *Korea Supply, supra*, 29 Cal.4th at p. 1153 [plaintiff must plead and prove defendant's acts were independently wrongful, apart from interference with contract].)

Menke's reliance on defamation as a predicate for its interference claims appears to be premised on Chrysler's letter to Wester detailing its reasons for rejecting Menke's application to assume Wester's franchise. Menke appears to claim Chrysler's publication of the letter to Wester interfered with Menke's prospective economic advantage. But the underlying tort on which Menke relies, defamation, requires damages. (Civ. Code, §§ 44, 45.) Menke fails to allege the publication to Wester damaged Menke: Wester did *not* withdraw its agreement transferring the franchise to Menke; rather, it had already been rejected by Chrysler. Plainly, Menke believes the rejection was unreasonable because Chrysler's stated objections were unfounded or could

be corrected. But, in the absence of the stricture imposed by subdivision (e), which does not apply to Menke, Chrysler's refusal to execute the franchise agreement with Menke is not evidence of a tort. (See Evid. Code, § 669.)

Menke's misrepresentation claim similarly fails because it is simply a rehash of the allegedly defamatory misrepresentations in Chrysler's letter to Wester. It also fails when construed as an attack on Stavale's alleged, earlier misrepresentation that Menke was not an approvable applicant, while Butts might be. Menke fails to claim it relied on the alleged misrepresentation; to the contrary, Menke disregarded the statement and went forward with negotiations. Indeed, Wester entered a transfer agreement with Menke rather than Butts, revealing Menke's failure to allege it suffered any damage from the statement. (See *Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 649 [deceit action requires reliance and damages, among other elements].) Of course, Chrysler declined to approve either Menke or Butts, but even if that choice proves unreasonable, it furnishes no basis for Menke to state a claim.

Menke's final claim that Chrysler divulged confidential and proprietary information also fails. Menke argues obliquely that Chrysler, by inviting Butts to the negotiations, somehow interfered with Menke's economic prospects or its franchise transfer contract with Wester. Menke suggests Chrysler wrongfully made Butts privy to Menke's confidential information, but the claim fails for vagueness. Menke gives no hint what that information might have been, why it was privileged, how Chrysler was bound to confidence, or how Menke was damaged. (See, e.g., *Tele-Count Engineers, Inc. v. Pacific Tel. & Tel. Co.* (1985) 168 Cal.App.3d 455, 462-463 [no protection where offeror fails to maintain secrecy].) If the allegedly confidential information was the price Menke was willing to pay, Menke suffered no damage because Wester accepted Menke's offer

over Butts's. In sum, because the trial court could reasonably conclude Menke alleged no interference or tortious conduct other than Chrysler's allegedly unreasonable refusal to consent to transfer, the court did not err in sustaining the demurrer to Menke's complaint.

We note that because Menke alleged no tortious conduct independent of its unavailing claims under section 11713.3, subdivision (e), the parties' extensive discussion of whether *Woods v. Fox Broadcasting Sub., Inc.* (2005) 129 Cal.App.4th 344 and related cases confer tort "immunity" for parties who breach a contract is moot.[4]

III

DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

O'LEARY, J.

[4] *Woods* rejected the notion that *Applied Equipment* stood for the proposition that "an ownership interest in a business entity's contract confers immunity from tort liability for interfering with the entity's contracts" and that *Applied Equipment* "can be stretched so far that it now protects a defendant who has no more than an economic interest or connection to the plaintiff's contract with some other entity." (*Woods, supra*, 129 Cal.App.4th at p. 355.)

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CERTIFIED FOR PARTIAL PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

LARRY MENKE, INC., et al., Plaintiffs and Appellants, v. DAIMLERCHRYSLER MOTORS CO. et al., Defendants and Respondents.	G039686 (Super. Ct. No. 06CC13003) ORDER GRANTING REQUEST FOR PUBLICATION

Attorney Ann Marie Mortimer, for respondents DaimlerChrysler Motors Co. et al., has requested that section II, subsection A, of our opinion, filed on February 9, 2009, be certified for publication. It appears portions of the opinion meet the standards set forth in California Rules of Court, rule 8.1105(c). The request is therefore GRANTED. (See Cal. Rules of Court, rule 8.1110 [providing for partial publication].) Accordingly, the opinion is ordered published in the Official Reports, with the exception of section II, subsection B.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

O’LEARY, J.